

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PURITY ZINC METALS CO. (U.S.) INC.

and

Case 4--CA--13412

OIL, CHEMICAL AND ATOMIC
WORKERS INTERNATIONAL UNION
LOCAL 8--719

DECISION AND ORDER

Upon a charge filed by the Union 15 December 1982, the General Counsel of the National Labor Relations Board issued a complaint 26 January 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 16 March 1983 the General Counsel filed a Motion for Summary Judgment. On 21 March 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board."

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.¹

On the entire record, the Board makes the following

Findings of Fact

1. Jurisdiction

The Respondent, a Pennsylvania corporation, at its plant in Easton, Pennsylvania, manufactures zinc metals and alloys. During the past year, a representative period, the Respondent, in the course and conduct of its business operations, sold and shipped goods and materials valued in excess of \$50,000 directly to points located outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

All the Respondent's employees described in article 1 of the parties' most recent collective-bargaining agreement, effective by its terms from 17

¹ In granting the General Counsel's Motion for Summary Judgment Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations of the legal conclusions or the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

May 1982 to 30 November 1982, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

At all times material herein, the Respondent has recognized the Union as the exclusive bargaining representative of the Respondent's employees in the unit described above.

On or about 1 December 1982 the Respondent unilaterally changed the employment terms and conditions of the unit employees by discontinuing their health insurance coverage, by refusing to comply with the seniority provisions of the collective-bargaining agreement regarding recall of employees from layoff, and by permitting supervisors to perform unit work. On or about 22 December 1982 the Respondent unilaterally refused to comply with the grievance-arbitration procedure of the collective-bargaining agreement. The Respondent engaged in the above conduct without affording the Union an opportunity to negotiate and bargain.

We find that, by its conduct, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. Purity Zinc Metals Co. (U.S.) Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Oil, Chemical and Atomic Workers International Union Local 8--719 is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees described in article 1 of the most recent collective-bargaining agreement between the parties, effective from 17 May 1982 to 30 November 1982, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. By refusing on or about 1 December 1982 and at all times material thereafter to bargain collectively with the above-named labor organization as

the exclusive bargaining representative of all the employees in the appropriate unit, by unilaterally discontinuing health insurance coverage of unit employees, by unilaterally refusing to comply with the seniority provisions of the collective-bargaining agreement regarding recall of unit employees from layoff, by unilaterally permitting supervisors to perform unit work, and by unilaterally refusing since 22 December 1982 to comply with the grievance-arbitration procedure of the collective-bargaining agreement, without affording the Union an opportunity to negotiate and bargain regarding these matters, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By its refusal to bargain, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, because we have found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing employee terms and conditions of employment, we shall order that the Respondent restore the status quo ante. We also order the Respondent to make the employees whole for any monetary losses they may have suffered as a result of the Respondent's

refusal to comply with the seniority provisions of the collective-bargaining agreement regarding the recall of laid-off employees and the Respondent's assignment of unit work to supervisors. Backpay shall be computed in accordance with the formula stated in F. W. Woolworth Co., 90 NLRB 289 (1950), with interest in accordance with Florida Steel Corp., 231 NLRB 651 (1977). See generally Isis Plumbing Co., 138 NLRB 716 (1962).

We have also found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally discontinuing health insurance coverage. In order to dissipate the effects of this unlawful action, we order that the Respondent make its employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful failure to keep such coverage in force as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be with interest as set forth in Florida Steel, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Purity Zinc Metals Co. (U.S.) Inc., Easton, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally modifying employee terms and conditions of employment by discontinuing health insurance coverage for unit employees, by refusing to comply with seniority provisions of its collective-bargaining agreement regarding the recall of laid-off employees, by permitting supervisors to perform unit work, and by refusing to comply with the grievance-arbitration procedure in the agreement, without affording the union an opportunity to negotiate and bargain.

(b) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Oil, Chemical and Atomic Workers International Union Local 8--719 as the exclusive bargaining representative of its employees in the following appropriate unit:

All of Respondent's employees described in Article 1 of the most recent collective-bargaining agreement which was effective by its terms from May 17, 1982 to November 30, 1982.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the employee terms and conditions of employment as they existed prior to the unilateral changes specified in paragraph 1(a) of this Order.

(b) Upon request, bargain with Oil, Chemical and Atomic Workers International Union Local 8--719 as the exclusive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(c) Make whole the employees in the appropriate unit by reimbursing employees for any losses or expenses ensuing from the Respondent's unlawful failure to maintain employee insurance coverage and from the Respondent's other unilateral changes, in the manner set forth in the section of this decision entitled "'The Remedy.'"

(d) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records

necessary to analyze the amount of backpay or other money due employees, if any, under the terms of this Order.

(e) Post at its facility in Easton, Pennsylvania, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

5 March 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Lennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Oil, Chemical and Atomic Workers International Union Local 8--719 as the exclusive representative of the employees in the following appropriate unit:

All of our employees described in Article 1 of the most recent collective-bargaining agreement between the parties, effective by its terms from May 17, 1982 to November 30, 1982.

WE WILL NOT unilaterally discontinue health insurance coverage for unit employees, refuse to comply with the seniority provisions of the collective-bargaining agreement regarding the recall of laid-off employees, permit supervisors to perform unit work, or refuse to comply with the grievance-arbitration procedure of the collective-bargaining agreement, without affording the Union the opportunity to negotiate and bargain with respect thereto.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as exclusive representative of all the employees in the bargaining unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL restore the employees terms and conditions of employment as they existed prior to the unilateral changes specified above.

WE WILL make whole the employees in the appropriate unit by reimbursing them for any losses or expenses ensuing from our unlawful discontinuance of health insurance coverage and from our other unilateral changes.

PURITY ZINC METALS CO. (U.S.) INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, One Independence Mall, Seventh Floor, 615 Chestnut Street, Philadelphia, Pennsylvania 19106, Telephone 215--597--7643.